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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,909	09/14/2006	Junkuan Wang	3712036.00753	1906
29157	7590	06/29/2011		
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER MI, QIUWEN	
			ART UNIT 1655	PAPER NUMBER
			NOTIFICATION DATE 06/29/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/598,909	Applicant(s) WANG ET AL.	
	Examiner QIUWEN MI	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 12-14 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-14 and 20-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

CONTINUED EXAMINATIONS

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/11/2011 has been entered.

Applicant's amendment and 132 Declaration filed on 5/11/2011 are acknowledged, with the cancellation of claims 9-11, 15-19, and newly added claims 22-28. Claims 1-8, 12-14, and 20-28 are pending. **Claims 1-8, 12-14, and 20-28 are examined on the merits.**

Any rejection that is not reiterated is hereby withdrawn.

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 12-14, and 20-28 are newly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 (at line 9), Claims 12 and 14 (at line 11), Claim 22 (at line 7) recite "stable". The term "stable" in claims 1, 12, 14, and 22 is a relative term which renders the claim indefinite. The term "stable" is not defined by the claim, the specification does not provide a standard for

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ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For instance, it is unclear whether the term "stable" means without producing precipitation or without growing mold or bacterial? Is it stable at the room temperature or at 50 degree C, or in the refrigerator? Will it precipitate at room temperature for one year? Six month or for one month?

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 14, 20, and 21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Osanai (JP 09107880 A), in view of Edenharder et al (Edenharder et al, Isolation and characterization of structurally novel antimutagenic flavonoids from spinach (*Spinacia oleracea*), Journal of agricultural and food chemistry, (2001 Jun) Vol. 49, No. 6, pp. 2767-73), Faulks et al

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(Faulks et al, Kinetic of gastro-intestinal transit and carotenoid absorption and disposal in ileostomy volunteers fed spinach meals, Eur J Nutr (2004) 43: 15-22), and Hovari et al (Hovari et al, Examination of flavonoid content in Hungarian Vegetables, Special Publication - Royal Society of Chemistry (1999), 240(Natural Antioxidants and Anticarcinogens in Nutrition, Health and Disease), 296-298), and further in view of Imazawa et al (JP 2003164261 A).

This rejection is maintained for reasons of record set forth in the Office Action mailed out on 11/16/2010, repeated below, slightly altered to take into consideration Applicant's amendment filed on 5/11/2011. Applicants' arguments filed have been fully considered but they are not deemed to be persuasive.

Osanai teaches to produce a suitably producible cow's milk (thus milk from animal origin, thus a carrier) at a low cost by using a widely used vegetable, capable of enriching iron, enhancing hematopoietic actions, further containing various vitamins or minerals blended in good balance and effective against various symptoms of anemia, constipation or climacteric disturbance of women (thus a food, thus an oral composition). This cow's milk contains a vegetable and is obtained by adding about 12.5 g KOMATSU-NA [*Brassica campestris* (rapa group)], about 2.5 g spinach (thus a vegetable, thus a leave), about 2.5 g total amount of mulukkiyya, parsley, water cress and beefsteak plant, 22.5 g lemon (thus a fruit) and 2.5 g reducing palatinose with about 150cc cow's milk. Furthermore, the cow's milk containing the vegetable is prepared by placing about 12.5 g KOMATSU-NA, about 2.5 g spinach and about 2.5 g total amount of mulukkiyya, parsley, water cress and beefsteak plant based on 10 cc cow's milk in a mixer, pulverizing (thus milling in milk) and mixing the ingredients, adding about 22.5 g lemon and about 2.5 g reducing palatinose thereto and further adding cow's milk thereto so as

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to make the sum total to 200 cc (thus a liquid, thus a miscible, and dispersible primary composition) (see Abstract). Osanai teaches a method of producing cowsmilk containing vegetables characterized as placing approximately 15 g of carrots, approximately 22.2 g of lemon, and approximately 2 g of reduced palatinose in 100 cc of cowsmilk in a mixer, pulverizing it and mixing it, straining it in a strainer twice (thus excluding insoluble fibers), and then adding cowsmilk to this so that it reaches 200 cc (page 5, claim 6 of the full translation). Osanai also teaches Table 1 indicated the comparative examples. A regulated soymilk is commonly known as "regulated soymilk" (thus a plant-based milk carrier) from company A wherein the soymilk has been regulated (page 18, [0014]). Osanai further teaches

As evidenced by Edenharder et al, spinach contains carotenoids (thus a hydrophilic bioactive component) and flavonoids such as flavonol and flavanone (thus a lipophilic bioactive component) (see Abstract), therefore, the milk product of Osanai that contains spinach contains at least essential lipophilic and hydrophilic bioactive components consisting of vegetable etc.

As further evidenced by Faulks et al, spinach contains beta-carotene (thus a hydrophilic bioactive component) (see Abstract).

As also evidenced by Hovari et al, the highest quercetin concentration could be detected in different types of onion (67.1-171.3 mg/kg) and in spinach (page 296, last paragraph) (thus the limitation of claim 21 is met).

Osanai does not teach the insoluble fibers are removed by centrifuging the carrier after milling.

Imazawa et al teach a method for manufacturing extract and/or squeezed liquid, involves grinding raw material, homogenizing, dispersing in medium at less than 60 degrees C, extracting,

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emulsifying and removing dregs and/or squeezed dregs. The raw materials are selected from coffee, green tea (thus containing lipophilic and hydrophilic bioactive components), black tea, oolong tea, herb tea, wild grass tea, chinese medicine tea , cocoa, vanilla, fruits or vegetables. The dispersion medium has low temperature of less than 50 degrees C preferably -5-50 degrees C. The dispersion medium is water, cow's milk (thus a carrier) dairy products, liquid of saccharides, sugar alcohol, mineral, vitamin, stabilizer, emulsifier and bacteriostatic. The mixture is homogenized using homogenous machine (thus milling the material) equipped with pump, which pours dispersion liquid at high voltage and high speed continuously in the homogenous valve (see Abstract). Imazawa et al also teach in accordance with a conventional method, separation removal of extraction slag and/or the juice slag is carried out using a liquid cyclone, a clarifier, centrifugal separation (thus insoluble fibers are removed by centrifuging the carrier after milling), filtration, precision filtration, decantation etc [0027] (see machine translation attached). Imazawa et al teach the method is suitable for the continuous mass production and extremely effective from the viewpoint of the effective utilization of food resources and the economic merit compared with conventional extraction/squeezing method (see Abstract).

First of all, the MPEP states the following: "[E]ven though product-by-process claims are limited by and defined by the process determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process...The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not

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directly added, but is instead produced in-situ does not change the end product" (see MPEP 2113 [R-1]). Therefore, although Osanai teaches using strainers twice, instead of using claimed centrifuging process, insoluble fibers are being removed either way, and the final products are not materially different. Even if there is subtle difference between using strainers and centrifuge machine, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the claimed centrifuging step since Imazawa et al teach removing extraction slag by a liquid cyclone, a clarifier, centrifugal separation, filtration, precision filtration, or decantation. It is evidenced by Imazawa et al that centrifuging step is well known in the art to remove extraction slags, and it is used interchangeably in the art with other methods such as filtration or straining. Since Imazawa et al teach using dispersion medium cowsmilk to grind raw plant material for extraction, and since Imazawa et al teach the method is extremely effective in utilization of food resources and has economic merit compared with conventional extraction/squeezing method, one of the ordinary skills in the art would have been motivated to combine the teachings of the references together.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 1-8, 12-14, and 20-28 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Osanai, Edenharder et al, Faulks et al, Hovari et al, and Imazawa et al as

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applied to claims 1-8, 14, 20, and 21 above, and further in view of Hong et al (KR 2003022942 A).

This is a new rejection necessitated by the Applicant's amendment filed on 5/11/2011.

The teachings of Osanai, Edenharder et al, Faulks et al, Hovari et al, and Imazawa et al are set forth above and applied as before.

The combination of Osanai, Edenharder et al, Faulks et al, Hovari et al, and Imazawa et al do not specifically teach a freeze-dried powder; neither the combination explicitly teach using a plant-based milk carrier such as soymilk.

Hong et al teach provided is a process for preparing liquid and powder types of fermented vegetable milk using legumes and rice as main ingredients to improve its preservability and distribution. Hong et al teach the process for preparing liquid type of fermented vegetable milk is characterized by culturing a mixture of soy milk (thus a plant-based milk carrier) and rice milk with bifidobacterium and Lactobacillus sp. strains and fermenting it, wherein the mixing ratio of soy milk to rice milk is 1:10-10:1, the rice milk is obtained by saccharifying polished or unpolished rice or a mixture thereof. The powder type of fermented vegetable milk is manufacture by freeze-drying the prepared liquid type of vegetable milk to minimize the destroy of nutrients (see Abstract).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use freeze-dried powder in the composition in Osanai since Hong et al teach vegetable milk is manufactured by freeze-drying the prepared liquid type of vegetable milk to minimize the destroy of nutrients. Therefore, one of ordinary skill in the art would have been

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motivated to use freeze-dried powder in the composition in Osanai to minimize the destroy of nutrients.

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use a plant-based milk carrier such as soymilk since Hong et al teach a vegetable milk using legumes and rice as main ingredients to improve its preservability and distribution. In addition, as evidenced by Osanai a "regulated soymilk" (thus a plant-based milk carrier) is well known in the art by the time the invention was made. Therefore, one of ordinary skill in the art would have been motivated to use plant-based milk carrier to improve its preservability and distribution.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Applicant argues that "Applicants have surprisingly found that milling the material contained in the milk or milk protein-containing carrier allows for the formation of much smaller particles of ground plant material, allowing more efficient access by the milk or milk protein-containing carrier to both the water-soluble and oil-soluble bioactives of the plant material. Moreover, Applicants have found that the proteins in the milk or milk protein-containing carrier are significant for the increased extraction of the lipophilic and hydrophilic bioactive components from the plant material. Furthermore, centrifuging the milk or milk protein-containing carrier after milling of the fruit or plant materials removes the insoluble fibers and

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further provides the claimed Composition as a whole to be stable, miscible and dispersible in an aqueous system. See specification, page 2, lines 22-28 and page 3, lines 6-11” (page 8, last paragraph).

This is not found persuasive. According to MPEP 716.02 (a), a greater than additive effect is not necessarily sufficient to overcome a prima facie case of obviousness because such an effect can either be expected or unexpected. Applicants must further show that the results were greater than those which would have been expected from the prior art to an unobvious extent, and that the results are of a significant, practical advantage. *Ex parte* The NutraSweet Co., 19 USPQ2d 1586 (Bd. Pat. App. & Inter. 1991). In the instant case, Applicant needs to present a side by side comparison between the claimed invention and the closest art to show the allegedly surprising results, mere argument or allegation is insufficient to overcome the obviousness rejection.

Applicant argues that “*Osanai, Edenharder, Faulks, Hovari* and *Imazawa* fail to disclose or suggest each and every element of independent Claims 1, 12 and 14. *Osanai, Edenharder, Faulks, Hovari* and *Imazawa* alone or in combination fail to disclose or suggest a miscible primary composition comprising a milk-based carrier that is stable, miscible and dispersible in an aqueous system as required by independent Claims 1, 12 and 14” (page 9, 2nd paragraph).

This is not found persuasive. *Osanai* teaches a method of producing cowsmilk containing vegetables characterized as placing approximately 15 g of carrots, approximately 22.2 g of lemon, and approximately 2 g of reduced palatinose in 100 cc of cowsmilk in a mixer, pulverizing it and mixing it, straining it in a strainer twice (thus excluding insoluble fibers), and then adding cowsmilk to this so that it reaches 200 cc. It is noted that since the vegetables were

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mixed with milk, pulverized, and strained, thus the vegetables are miscible and dispersible in the aqueous milk system. Regarding the limitation “stable”, please see the 112, 2nd rejection stated above.

Applicant argues that “*Osanai* discloses a beverage containing cow's milk, rapa gourd, spinach and lemon, among other ingredients. See *Osanai*, pages 5-6. To distinguish the composition of *Osanai* with that of the claimed compositions, Applicants submit herewith a Declaration under 37 C.F.R. §1.132 (“*Declaration*”) that demonstrates the deficiencies of the prior art with respect to the present claims (page 9, 2nd paragraph). Applicant argues that “As supported by the *Declaration*, *Osanai* discloses a beverage containing cow's milk, rapa gourd, spinach and lemon, among other ingredients. Each of the embodiments of the beverage disclosed by *Osanai* at least includes approximately 22.5 grams of lemon. Moreover, lemon is an essential aspect of *Osanai's* beverage as it supplies vitamin C in an amount that is not satisfied with the remaining elements of the beverage. See *Osanai*, paragraph 12” (page 9, 3rd paragraph). Applicant argues that “As supported by the *Declaration*, an experiment was performed to determine the impact of lemon on cow's milk as taught by *Osanai*. The experiment showed that the addition of 22.5 grams of lemon to 100 ml of milk led to a precipitation/coagulation of a large portion of the milk proteins in the milk causing an obvious lack of miscibility. See Exhibit A of the *Declaration*. Therefore, upon experimental testing to compare *Osanai's* beverage against the claimed invention, it is clear that *Osanai* does not provide a miscible primary composition that is stable, miscible and dispersible in an aqueous system according to the claimed invention” (page 9, 4th paragraph). Applicant argues that “As supported by the *Declaration*, the inventors have surprisingly found that the milk proteins are essential for the

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improved extraction of the lipophilic bioactive components according to the claimed invention. The claimed miscible primary composition comprising a milk-based carrier that is stable, miscible and dispersible in an aqueous system provides the optimal conditions for extracting the most lipophilic bioactive components from plant materials. In contrast, because of the precipitation/coagulation of a large portion of the milk proteins in the beverage of *Osanai*, these precipitated or coagulated proteins are immiscible in solution and are no longer free to extract the lipophilic bioactive components of plant materials. This reduces the effectiveness of the extraction and the amount of the extracted bioactive components that could end up in the beverage. As a result, the miscible primary composition of the claimed invention is a distinguishable product over the immiscible beverage resulting from the components and process of *Osanai*” (page 9, last paragraph bridging page 10).

The Declaration under 37 CFR 1.132 filed on 5/11/2011 is insufficient to overcome the 103 rejection as set forth in the last Office action because: In Exhibit A, 22.5 g lemon was mixed with 100 ml cow’s milk, and extract cow’s milk was adjusted to 200 ml, protein precipitate was observed in 10 minutes. However, this has nothing to do with the cited reference *Osanai*. First of all, *Osanai* does not teach a composition comprising only lemon and cow’s milk as shown in Exhibit A. Secondly, the Exhibit A in the Declaration does not have the process of “pulverizing it and mixing it, straining it in a strainer twice” as taught by *Osanai*. Furthermore, the Declaration does not have a negative control, for instance, the claimed composition does not have any precipitation as a comparison.

Applicant argues that “Applicants also respectfully submit that the skilled artisan would have no reason to combine the cited references to arrive at the present claims because the cited

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references are directed to unrelated products that have completely different objectives. *Osanai* is entirely directed to cow's milk containing vegetables whose main constituent is rapa gourd, wherein the vegetable containing rapa gourd is mixed with cowsmilk. See *Osanai*, pages 5-6. *Edenharder* is entirely directed to the isolation and characterization of antimutagenic flavonoids from spinach. See *Edenharder*, Abstract. Indeed, the entire disclosure of *Edenharder* is directed to the purification of antimutagens from spinach by preparative and micropreparative HPLC from a methanol/water extract of dry spinach after removal of lipophilic compounds. *Id.* As such, not only is the subject matter of *Edenharder* nonanalogous art when compared to *Osanai* and the present claims, but *Edenharder* teaches away from the present claims when *Edenharder* discloses removal of lipophilic compounds from the spinach extract” (page 10, 2nd paragraph). Applicant argues that “Similar to *Edenharder*, *Faulks* is entirely directed to the quantification of 13-carotene and lutein absorption from a representative green vegetable with different degrees of processing, using both mass balance and metabolic modeling of triglyceride-rich lipoprotein plasma fraction. See *Faulks*, Summary. Like *Edenharder*, the green vegetable of *Faulks* is spinach and the entire disclosure is directed to the kinetics of gastro-intestinal transit and carotenoid absorption and disposal in ileostomy volunteers fed spinach meals. See *Faulks*, Summary and Introduction. As such, *Faulks* is also nonanalogous art when compared to *Osanai* and the present claims” (page 10, 3rd paragraph). Applicant argues that “*Hovari* is entirely directed to the effects of flavanoids on human health and the content of flavonoids in specific vegetables. See *Hovari*, Introduction, Table 1. *Imazawa* is entirely directed to extraction efficiency and preparation of juice in a short time for industrialization. See *Imazawa*, paragraphs

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18 and 19. *Imazawa* discloses processes that include pulverizing coffee beans, fruits, vegetables, etc., adding a dispersing media to the pulverized coffee beans, fruits, vegetables, etc., and then homogenizing the mixture. See *Imazawa*, Working Examples” (page 10, last paragraph bridging page 11). Applicant argues that “As such, the cited references are clearly directed to unrelated products or processes that have completely different objectives. Moreover, none of the cited references even recognizes the benefits obtained by the presently claimed compositions including, for example, improved bioavailability and miscibility of from extracted fruits or plant materials by milling the material in a milk or milk protein-containing carrier and centrifuging the milk or milk protein-containing carrier after milling of the fruit or plant materials to remove the insoluble fibers. Such treatments allow the essential lipophilic and hydrophilic bioactive components to have improved bioavailability and miscibility in the milk or milk protein-containing carrier. See specification, page 4, lines 1-3” (page 11, 2nd paragraph).

This is not found persuasive. The rejection is based on *Osanai* in view of *Imazaawa*, references *Edenharder et al*, *Faulks et al*, and *Hovari et al* are only brought in to show the intrinsic properties of the product in *Osanai*. *Osanai* teaches “the cow's milk containing the vegetable is prepared by placing about 12.5 g KOMATSU-NA, about 2.5 g spinach and about 2.5 g total amount of mulukkiyya, parsley, water cress and beefsteak plant based on 10 cc cow's milk in a mixer, pulverizing (thus milling in milk) and mixing the ingredients” (see Abstract). The process of mixing the claimed ingredient with milk in a mixer, pulverizing, and mixing the ingredient is not materially different from the claimed “milling the material in the milk or milk protein-containing carrier”. Although *Osanai* teaches using strainers twice, instead of using claimed centrifuging process, insoluble fibers are being removed either way, and the final

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products are not materially different. Even if there is subtle difference between using strainers and centrifuge machine, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the claimed centrifuging step since Imazawa et al teach removing extraction slag by a liquid cyclone, a clarifier, centrifugal separation, filtration, precision filtration, or decantation. It is evidenced by Imazawa et al that centrifuging step is well known in the art to remove extraction slags, and it is used interchangeably in the art with other methods such as filtration or straining. Since Imazawa et al teach using dispersion medium cowsmilk to grind raw plant material for extraction, and since Imazawa et al teach the method is extremely effective in utilization of food resources and has economic merit compared with conventional extraction/squeezing method, one of the ordinary skills in the art would have been motivated to combine the teachings of the references together.

Applicant argues that “Finally, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there exists no reason for the skilled artisan to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In fact, Applicants submit that what the Patent Office has done here is to apply hindsight reasoning by attempting to selectively piece together teachings of each of the references in an attempt to recreate what the claimed invention discloses. Indeed, the skilled artisan must have a reason to combine the cited references to arrive at the present claims. Applicants respectfully submit that such a reason is not present in the instant case” (page 11, 3rd paragraph).

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Qiuwen Mi/

Primary Examiner, Art Unit 1655